

Application Serial No.: 10/049,876
Applicants: William F. AFTOORA
Response Filed: January 20, 2005
Response to Office Action Date: September 20, 2004

III. REMARKS

Claims 1-34 were originally filed in United States Serial No. 10/049,876, filed on June 7, 2002. Claims 33 and 34 have been withdrawn in view of Applicant's election of claims 1-32 in its response filed July 22, 2004. By the present response, Applicant has amended claims 1 and 14-16. Applicant respectfully requests reconsideration and allowance of claims 1-32, in view of the amendments and remarks presented herein.

35 U.S.C. §112

Claim 14 has been rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. It is specifically alleged that the recited limitation "the roux" does not have sufficient antecedent basis.

Applicant has amended claim 14 to read as follows:

"The flavored solid-form food of claim 1, wherein said preservative is selected from the group consisting of potassium sorbate, sodium benzoate and disodium ethylene diamine tetraacetic acid (EDTA)."

The limitation "the roux" has been deleted from claim 14 by this amendment.

The limitation "the roux" also appears in claim 15. To avoid potential rejection in the future, Applicant has amended claim 15 to read as follows:

“The flavored solid-form food product of claim 1, wherein the food product is adapted to be easily dispersible in aqueous liquids selected from the group consisting of water, milk, cream, vinegar, fruit juice, vegetable juice, meat stock, poultry stock, fish stock, seafood stock, vegetable stock, meat cook-out juice, fish cook-out juice, seafood cook-out juice and cooking alcohol.”

The limitation “the roux” has been deleted from claim 15 and has been replaced by the limitation “the food product.”

Applicant respectfully submits that the amendment to claim 14 overcomes the rejection under 35 U.S.C. §112, second paragraph. Applicant, therefore, respectfully requests that this rejection be withdrawn.

35 U.S.C. §102

Claims 1-15 have been rejected under 35 U.S.C. §102(b) as being anticipated by WO 96/29894. It is specifically alleged that WO 98/29894 discloses a food product comprising 5-80% of an edible fat, 1-20% of a starch, 0.5-15% of dry milk products, up to 40% water, taste/flavor compounds, and 0.25-5% gelatin.

Applicant respectfully traverses this rejection. For anticipation to apply, a prior art reference must teach each and every limitation of the claims. As amended, claim 1 provides a solid-form food product that includes a preservative. Support for this amendment can be found in the specification at least at page 27, line 5; page 30, line 23; and page 33, line 16. WO 96/29894 does not teach or suggest the limitation of a sauce base composition including a preservative. In fact, WO 96/29894 specifically discloses that the sauce base composition possesses “a rather high microbiological stability.” See Page 5, lines 32-36. Therefore, one having ordinary skill in the art would not be motivated to add a preservative to the sauce base composition.

Applicant, therefore, respectfully submits that claim 1 is not anticipated by WO 96/29894. Claims 2-15 ultimately depend from claim 1 and also are allowable for the same reasons. Accordingly, Applicant respectfully requests that the rejection of claims 1-15 under 35 U.S.C. §102(b) be withdrawn.

35 U.S.C. §103

It is alleged that claims 16-32 are obvious under 35 U.S.C. §103(a) over WO 96/29894 in view of USPN 3,928,252. It is specifically alleged that WO 98/29894 discloses a food product comprising 5-80% of an edible fat, 1-20% of a starch, 0.5-15% dry milk products, up to 40% water, taste/flavor compounds, 0.25-5% gelatin, and carbon dioxide gas; that USPN 3,928,252 discloses a sauce containing sodium bicarbonate; and that it would have been obvious to one having ordinary skill in the art to incorporate the sodium bicarbonate of USPN 3,928,252 into the invention of WO 96/29894.

Applicant respectfully traverses this rejection. It is an established tenet of patent law there must be some suggestion or motivation to modify a reference or to combine reference teachings. The mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination. *In re Mills*, 916 F.2d 680, 16 USPQ2d 1430 (Fed. Cir. 1990). Moreover, “. . . references that teach away cannot serve to create a prima facie case of obviousness.” *In re Gurley*, 27 F.3d 551, 31 USPQ2d 1130 (Fed. Cir. 1994). Applicant respectfully submits that there is no suggestion or motivation to combine the cited references.

WO 96/29894 discloses a sauce base composition comprising a 5-80 parts of a fat, 1-20 parts of a starch, up to 40 parts water, 0.25-5 parts gelatin, and flavor/taste components. Thus, the sauce base composition contains starch as a required component.

USPN 3,928,252 discloses a thickening agent comprising sodium carboxymethylcellulose, a halogen donating compound, sodium bicarbonate, and an organic acid.

USPN 3,928,252 is specifically directed to a thickening agent that is intended as a replacement for traditional starch thickeners. USPN 3,928,252 specifically teaches that “[T]he thickening agent can be substituted for starches, such as flour or corn starch.” See column 3, lines 41-42.

The “Background of the Invention” section of USPN 3,928,252 recognizes starch as common thickening agent and clearly identifies the following prominent disadvantages of its use in food thickening applications:

“starches must be premixed with a liquid to ensure a lump free consistency;”

“starches are normally dependent upon temperature for their thickening action;”

“carbohydrates found in starches contribute about four calories per gram and products thickened with starch cannot be considered to be low calorie;”

“starches present storage problems since insects may be attracted to the starch;”
and

“in commercial applications relatively large amounts of space are required for the storage of starches.”

In addition, USPN 3,928,252 discloses the preparation of a cake filling, a low-calorie raspberry milkshake, a gravy, a fromache, and a low-calorie mayonnaise, each utilizing the carboxymethylcellulose-based thickening agent. In none of these working examples is the carboxymethylcellulose-based thickening agent used in combination

with a starch. See columns 11 and 12. This is further evidence that the carboxymethylcellulose thickening agent of USPN 3,928,252 is not intended to be used in combination with a starch or starch-containing product, and was specifically developed as a replacement for such starch thickening agents. Applicant, therefore, respectfully submits that the combination of WO 96/29894 with USPN 3,928,252 is not proper and the 35 U.S.C. §103(a) rejection based on this combination of references should be withdrawn.

While Applicant submits that the combination of WO 96/29894 and USPN 3,928,252 is not proper, claims 16-32 are non-obvious even in view of the combination for other reasons.

Amended claim 16 reads as follows: "A flavored solid-form food product that is easily dispersible in aqueous liquids comprising: an edible fat; an edible starchy material; of a flavoring agent; a solidifying agent; an aqueous liquid; and an edible bicarbonate, wherein said food product is substantially acid neutralized." The specification discloses that an edible bicarbonate is included in the flavored, solid-form food product in an amount sufficient to substantially neutralize the acid in the food product.

By contrast, there is no disclosure, suggestion, or motivation in either WO 96/29894 or USPN 3,928,252 to include an edible bicarbonate for the purpose of neutralizing the acid content of a food product to which the carboxymethylcellulose-based thickening agent is added. Specifically, there is no discussion in WO 96/29894 to include a bicarbonate material for any purpose whatsoever. Furthermore, USPN 3,928,252 discloses the inclusion of sodium bicarbonate for the sole purpose of dispersing the carboxymethylcellulose thickener. See column 2, lines 59-68. There is simply no disclosure, suggestion, or motivation in USPN 3,928,252 to attempt to reduce the acid content in a food product to which the carboxymethylcellulose-based

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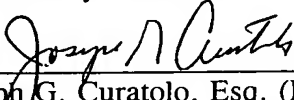
thickening agent is added. Moreover, there is no discussion or appreciation of the need to provide a thickened, low acid-containing food product in either reference.

As neither WO 96/29894 nor USPN 3,928,252, alone or in combination, disclose, suggest, or provide motivation for a substantially acid neutralized, flavored, solid-form food product, Applicant respectfully submits that claim 16 is non-obvious in view of these references. Claims 17-32 ultimately depend from allowable claim 16 and, therefore, also are allowable. Applicant respectfully requests that the rejection under 35 U.S.C. §103(a) be withdrawn.

In view of the amendments and remarks presented above, Applicants respectfully request the withdrawal of the 35 U.S.C. §102, §103, and §112 rejections and further request the issuance of a formal Notice of Allowance directed to claims 1-32.

Should the Examiner have any questions, Applicants' undersigned attorney would welcome a telephone call.

Respectfully submitted,



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